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No. 89, Original

# In the Supreme Court of the United States

OCTOBER TERM, 1981

STATE OF CALIFORNIA EX REL.
STATE LANDS COMMISSION, PLAINTIFF

*v.*

UNITED STATES OF AMERICA

*ON BILL OF COMPLAINT*

## MOTION OF THE UNITED STATES FOR JUDGMENT ON THE PLEADINGS AND SUPPORTING MEMORANDUM

REX E. LEE
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**MOTION OF THE UNITED STATES FOR JUDGMENT ON THE PLEADINGS**

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The United States of America, by its Solicitor General, moves the Court to enter judgment in its favor on the pleadings, on the following grounds:

1. There is no disputed issue as to any material fact;

2. The facts alleged in the Complaint and admitted in the Answer entitle the United States, as a matter of law, to judgment as prayed for in the Answer.

REX E. LEE
*Solicitor General*

NOVEMBER 1981

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**MEMORANDUM FOR THE UNITED STATES IN SUPPORT OF ITS MOTION FOR JUDGMENT ON THE PLEADINGS**

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As the Complaint and the Answer disclose, there are no material issues of fact disputed between the parties. Neither party proposes to adduce evidence (except matters as to which judicial notice is appropriate). The only relevant facts, now effectively stipulated, are those previously identified:[1]

(a) At the time of California's admission to the Union in 1850, and for a half century thereafter, most of the lands now claimed were permanently submerged below the Pacific Ocean and some small part of them were tidelands—uncovered at low tide and submerged at high tide—adjacent to ocean-fronting uplands owned by the United States;

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[1]See Memorandum for the United States, filed August 14, 1981, at 1-2.

(b) Some years after California statehood, the United States withdrew the adjacent uplands from the public domain to create a Coast Guard Reservation, whose boundary on the Pacific Ocean was the line of mean high water;

(c) As a result of the construction by the United States of jetties at the turn of the Century, fairly rapid accretion occurred on the ocean side of the Coast Guard Reservation, so that the former submerged lands and tidelands in suit became uplands, the process being complete well before 1953;

(d) But for the construction, improvement and maintenance of the jetties, the lands in suit would have remained submerged or tidelands, approximately as they were in 1850 and for the next half century.

The only remaining question is one of law: Does this history of physical changes compel a declaration that the lands affected belong to the State of California (as claimed by the plaintiff) or that they appertain to the United States (as we maintain)? Although differing as to which are the controlling precedents, both parties agree that the answer is governed by prior decisions of this Court.[2] In these circumstances, the case is ripe for determination on the face of the pleadings and the United States and the State have joined in urging the Court to dispense with a reference to a Special Master. Instead, the United States has filed the present Motion for Judgment on the Pleadings, and we anticipate that California will do likewise. Our joint plea is that the Court enter an order setting down those cross-motions for

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[2]The State has outlined its legal argument in a Statement in Support of Motion for Leave to File Complaint, appended to the Motion filed July 7, 1981, at 2-26, and the United States has outlined its counter-argument in a responsive Memorandum filed August 14, 1981.

argument in due course and inviting the parties to file briefs in support of their respective motions.[3]

Respectfully submitted.

REX E. LEE
*Solicitor General*

NOVEMBER 1981

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[3]In the present situation, it seems appropriate to require the parties to file simultaneous opening briefs, with a right to each party to submit a reply brief thirty days thereafter. Cf. *United States* v. *Louisiana*, 391 U.S. 910 (1968).

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